

DATE: March 23, 1999

CASE NOS.: 96-ERA-00043
98-ERA-00024

In the Matter of

MAGED F. GABALLA

Complainant

v.

CAROLINA POWER AND LIGHT COMPANY

Respondent

**RECOMMENDED DECISION AND ORDER APPROVING
SETTLEMENT AGREEMENT AND GENERAL RELEASE
AND DISMISSING COMPLAINTS WITH PREJUDICE**

In this matter, which arises under the Energy Reorganization Act, 42 U.S.C. §5851 (the Act), and its implementing regulations which are found at 29 C.F.R. Part 24, the parties have filed a joint motion for approval of settlement. Attached to the parties' joint motion is a Settlement Agreement and General Release which was executed by the Complainant on March 3, 1999 and by the Respondent on March 12, 1999. The parties have certified that the agreement constitutes the sole settlement agreement with respect to the Complainant's claims in this matter.

Pursuant to the requirements of the Act and Regulations, I have reviewed the parties' settlement agreement and determined that it constitutes a fair, adequate and reasonable settlement of the complaints. 29 C.F.R. §24.6; *Macktal v. Secretary of Labor*, 923 F.2d 1150, 1153-54 (5th Cir. 1991); *Thompson v. U.S. Department of Labor*, 885 F.2d 551, 556 (9th Cir. 1989); *Fuchko et al. v. Georgia Power Co.*, Case Nos. 89-ERA-9, 89-ERA-10 (Sec'y. March 23, 1989), slip op. at 1-2. Although the settlement agreement resolves all issues in controversy between the parties, including matters arising under laws other than the Act, my review of the agreement has been limited to determining whether its terms provide a fair, adequate and reasonable settlement of the Complainant's allegations that the Respondents violated the Act. *Webb v. Numanco, LLC*, Case No. 98-ERA-27 (ARB January 29, 1999), slip op. at 2; *Poulos v. Ambassador Fuel Oil Co., Inc.*, Case No. 86-CAA-1 (Sec'y. November 2, 1987), slip op. at 2.

In their joint motion, the parties request that the Settlement Agreement and General Release, including an attached exhibit,¹ be treated as exempt from disclosure under the Freedom of Information Act, 5 U.S.C. §552 (FOIA). In addition, the parties have agreed that the terms of the Settlement Agreement and General Release “are confidential and will not be disclosed to third parties, except as required by law.” *Settlement Agreement* at para. 10. With regard to requests to exempt the terms of a settlement under that Act from the disclosure provisions of FOIA, the Administrative Review Board has held as follows:

The records in this case are agency records which must be made available for public inspection and copying under the FOIA. In the event a request for inspection and copying of the record of this case is made by a member of the public, that request must be responded to as provided in the FOIA. If an exemption is applicable to the record in this case or any specific document in it, the Department of Labor would determine at the time a request is made whether to exercise its discretion to claim the exemption and withhold the document. If no exemption were applicable, the document would have to be disclosed. Since no FOIA request has been made, it would be premature to determine whether any of the exemptions in the FOIA would be applicable and whether the Department of Labor would exercise its authority to claim such an exemption and withhold the requested information. It also would be inappropriate to decide such questions in this proceeding.

Webb v. Numanco, LLC, Case No. 98-ERA-27 (ARB January 29, 1999), slip op. at 3. *See also Darr v. Precise Hard Chrome*, Case No. 95-CAA-6 (Sec’y May 9, 1995), slip op. at 2-3; *DeBose v. Carolina Power and Light Co.*, Case No. 92-ERA-14 (Sec’y February 7, 1994), slip op. at 3. Therefore, I will construe the parties’ joint motion as a request that the Settlement Agreement and General Release, including the attached Exhibit “A”, be treated as confidential commercial pursuant to the provisions of 29 C.F.R. Part 70.² *See generally Bonanno v. Stone & Webster Engineering Corp.*, Case No. 97-ERA-33 (ARB June 27, 1997), slip op. at 2.

¹ Attached to the Settlement Agreement and General Release as Exhibit “A” is a copy of an Agreement of Final Settlement and Release which the parties entered into in a related proceeding before the North Carolina Industrial Commission.

² Pursuant to 29 C.F.R. §70.26(b), business submitters of information to the Department of Labor may designate specific information as confidential commercial information to be handled as provided in the Regulations. When FOIA requests are received for such information, the Department of Labor is required to notify the submitter promptly, 29 C.F.R. §70.26(e), and the submitter must be given a reasonable period of time to state its objections to disclosure. 29 C.F.R. §70.26(e). The submitter must be notified if a decision is made to disclose the information, 29 C.F.R. §70.26(f), or, in a case where the submitted information is withheld, if a suit is filed by the requesting party to compel disclosure. 29 C.F.R. §70.26(h).

Accordingly, it is hereby **RECOMMENDED** that the Settlement Agreement and General Release between the Complainant Maged F. Gaballa and the Respondent Carolina Light & Power Company be **APPROVED** and that the complaints filed in this matter be **DISMISSED WITH PREJUDICE**. It is **FURTHER RECOMMENDED** that the Settlement Agreement and General Release, including the attached Exhibit “A”, be designated as confidential commercial information pursuant to 29 C.F.R. §70.26(b).

Daniel F. Sutton

Administrative Law Judge

Camden, New Jersey

NOTICE

This Recommended Decision and Order will automatically become the final order of the Secretary unless, pursuant to 29 C.F.R. §24.8, a petition for review is timely filed with the Administrative Review Board, U.S. Department of Labor, Frances Perkins Building, Room S-4309, 200 Constitution Avenue, N.W., Washington D.C. 20210. Such a petition for review must be received by the Administrative Review Board within ten business days of the date of this Recommended Decision and Order, and shall be served on all parties and on the Chief Administrative Law Judge. See 29 C.F.R. §§24.8 and 24.9, as amended by 63 Fed. Reg. 6614 (1998).